

**Container Corporation of America and Billy Young.**  
Case 9-CA-14313

May 11, 1981

**DECISION AND ORDER**

On June 30, 1980, Administrative Law Judge Abraham Frank issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith, and to dismiss the complaint in its entirety.

The Administrative Law Judge found, in pertinent part, that Respondent violated Section 8(a)(1) of the Act by suspending Union Steward Billy Young for his refusal to return to work at the direction of General Supervisor Jim Grundy, because Young's conduct at the end of a grievance-related meeting fell into the category of "animal exuberance" and was not so extreme or flagrant as to deprive him of the Act's protection. We disagree.<sup>1</sup>

The essential facts are not in dispute. Respondent and the Union are parties to a collective-bargaining agreement containing a five-step grievance procedure providing at the first step for a discussion between the complaining employee, the immediate supervisor, and the appropriate department steward. In the event that a grieved matter cannot be satisfactorily resolved at the first step of the grievance procedure, it "shall be reduced to writing and moved to the next step" of the grievance procedure which entails a meeting between the plant superintendent, the grievant, the appropriate department steward, and the immediate supervisor if necessary.<sup>2</sup>

Young has been employed by Respondent for about 21 years, and has been a union officer and

the steward in the shipping department since 1977. Upon arriving at work a few minutes before starting time on June 29, 1979,<sup>3</sup> Young was handed an inventory schedule by Diane Best, his immediate supervisor. After examining the document, Young complained to Best and Day-Shift Supervisor Kenneth Graybeal that the list should contain more hourly employees and asked to get the matter settled before he went to work. Best offered to get in touch with Grundy, who had signed the list, and told Young to go to work. Young walked out of the shipping office and met Kessler Noe, the chief steward, who had a copy of the inventory. Noe told Young that he was on his way to a meeting with Grundy and Young went with him.

A few minutes later, Noe and Young met with Grundy in the shipping office. Graybeal and Best were also present. Grundy sat down at one of the desks and wanted to know what the problem was. Young charged that Marvin Sturgeon, the plant manager, had assigned the inventory to replace hourly personnel with salaried personnel. Noe also questioned the Company's procedures for drawing up the inventory schedule. Grundy and the two union officials argued about the issue for a few minutes. During the course of the meeting, which lasted about 15 to 20 minutes, Grundy explained that he had prepared the schedule without consulting anyone. Finally, Grundy said that the meeting was over, he had stated his position, and that was the way it was going to be. At that point Young stood up, slapped Grundy's desk with his hands, and said that he was "sick of this shit" and wanted to get something done right now, that every time they started getting the best of him Grundy would call the meeting off. Young said he wanted to see Sturgeon. Grundy told Young to get back to work and Grundy would get Sturgeon and bring him back. Young said he did not have to go back to work, that he had been relieved by Best before the meeting began. A second and third time Grundy told Young to go back to work. On the third occasion, Young told Grundy to get his ass out of the office, that he, Young, was not going anywhere. Grundy then told Young, "You're suspended until further notice." Grundy also told Young that he was suspended because of insubordination.

Young clocked out and proceeded to Sturgeon's office, but was stopped by someone and told that he had been suspended and to go home. Upon leaving the plant, Young prepared and submitted a grievance which was later dropped by the Union at an executive board meeting. Young's suspension lasted 3 days.

<sup>1</sup> The Administrative Law Judge found it unnecessary to determine whether Young's suspension also violated Sec. 8(a)(3) of the Act as alleged in the complaint. No exception has been filed with respect to the Administrative Law Judge's failure to pass on this allegation.

<sup>2</sup> In December 1978, the parties agreed that, to expedite the resolution of potential grievances and to avoid interruption of production, step one of the grievance procedure would be handled in the following manner:

*Step 1:* The problem, grievance or complaint is made known to the supervisor by the employee or the steward.

*Step 2:* If possible, supervisor answers the question raised to the best of his ability at the moment or obtains further information to be reported back to the concerned party.

*Step 3:* If the supervisor's answer resolves the question, the supervisor informs both the employee and/or the steward of the resolution. If unresolved, the supervisor will make arrangements for all three individuals to meet as soon as possible without interruption of production.

*Step 4:* If the issue is still unresolved, a written grievance, as provided in the contract, may be filed by the grieving party.

<sup>3</sup> All dates herein are in 1979.

Respondent does not dispute that Young was engaged in protected concerted activity in presenting or pressing the Union's grievance concerning the inventory schedule. Nor does Respondent contend that Young lost the protection of the Act by virtue of his using crude language, his slapping of Grundy's desk, or his telling Grundy to get out of Grundy's office. Rather, Respondent contends that Young's suspension was based solely on his adamant refusal to follow Grundy's orders at the end of the grievance meeting to go to work, and that the Administrative Law Judge's finding that Young was within his statutory right to refuse to follow those orders because Grundy had unilaterally closed the grievance meeting, thereby eliminating further debate, is unsupported by the evidence. We find merit in these contentions.

Under the terms of the contract, the supervisor at the first step of the grievance procedure has the right to bring the grievance meeting to a close. Thus, once the grievance is orally presented to him, he answers it; and, if his response fails to satisfy the Union or the grievant, he makes arrangements for the parties "to meet as soon as possible *without interruption of production* [emphasis supplied]." Here, Grundy met with Young and Noe over their complaint about the inventory schedule he had prepared; and there is no evidence that he in any way deprived Young and Noe of their right under the grievance procedure to make known the Union's position with respect to the inventory schedule before closing the meeting.

To the contrary, according to Noe's uncontradicted testimony, he and Young, on behalf of the Union, had a "full opportunity" during the 15- to 20-minute meeting to voice their complaints before Grundy stated that the meeting was over. By then Grundy had heard and considered the Union's views at length and had announced his position reaffirming the inventory schedule and rejecting the grievance. At that point little or nothing of substance could be stated by the meeting's participants that already had not been said concerning the grievance's merits. Even so, Grundy indicated a willingness to let Young and Noe pursue the matter further by agreeing to arrange as expeditiously as possible a meeting between the two union stewards and Sturgeon, the plant manager. In the meantime, however, Grundy instructed Young to go back to work, a reasonable instruction considering the contractual admonition that grievance meetings were to take place "without interruption of production."

In these circumstances, we find that Grundy's termination of the grievance meeting was in accordance with the step-one procedures of the con-

tract, and that Young did not have the right to extend the meeting until he was ready to end it on his own terms, merely because he was unhappy with its outcome. As noted, this is not a situation where Young's and Noe's views were given short shrift or they were not allowed to present their case. Thus, once the meeting was closed, Young was not at liberty to flout Grundy's orders to return to work, regardless of his dissatisfaction and displeasure with Grundy's step-one resolution of the grievance. Nor was he immune from possible disciplinary action for his refusals to follow Grundy's orders because he had been pursuing a grievance just moments before and wanted to argue the issue further. Young's recourse then rested in pursuing the matter further in the proffered meeting with Sturgeon and thence through the established grievance procedure, rather than disputing Grundy's actions by refusing to return to work as directed. In this regard, we deem it significant that Grundy did not suspend Young upon the latter's initial refusal to obey his back-to-work order. Indeed, it was not until after Grundy repeated the order two more times and Young persisted in disobeying it that Grundy suspended him. Such forbearance on Grundy's part belies a finding that Grundy acted precipitously in suspending Young, or in reprisal for Young's belligerent conduct. We cannot, therefore, find Young's conduct in refusing to return to work to be protected by the Act.<sup>4</sup> Young's suspension for refusing to return to work did not interfere with his protected participation in the grievance meeting.<sup>5</sup> Consequently, we find that Young's suspension did not violate Section 8(a)(1) of the Act.

Accordingly, we shall dismiss the complaint in its entirety.

## ORDER

It is hereby ordered that the complaint be, and it hereby is, dismissed in its entirety.

<sup>4</sup> Accordingly, we reject the Administrative Law Judge's finding that Young's conduct fell within the category of "animal exuberance" and was therefore protected. As a result, we find that the Administrative Law Judge's reliance on *The Betcher Manufacturing Corporation*, 76 NLRB 526, 527 (1948), and its progeny, is misplaced.

<sup>5</sup> Cf. *Calmas Combining Co.*, 184 NLRB 914 (1970); *Chevrolet, Division of General Motors Corporation*, 161 NLRB 438, 440-441 (1966).

## DECISION

### STATEMENT OF THE CASE

ABRAHAM FRANK, Administrative Law Judge: The original charge in this case was filed on September 11, 1979,<sup>1</sup> and amended on October 26. The original com-

<sup>1</sup> All dates are in 1979 unless otherwise noted.

Act, issued on October 31 and was amended prior to the hearing in this case to eliminate section 5(c) thereof. The hearing was held on April 2, 1980, at Louisville, Kentucky. All briefs filed have been considered.

At issue in this case are questions whether Respondent unlawfully suspended the Charging Party at the conclusion of a grievance-related meeting and unlawfully disciplined the Charging Party for violation of company procedures.

## I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Preliminary Findings and Conclusions

Respondent, a Delaware corporation with an office and place of business in Louisville, Kentucky, the only facility involved in this proceeding, is engaged in the business of manufacturing cardboard packaging and related products. Respondent admits and I find that it is engaged in commerce within the meaning of Section 2(2), (6), and (7).

The United Paperworkers International Union Local 1048, AFL-CIO, hereinafter the Union, is a labor organization within the meaning of Section 2(5) of the Act.

### B. Background

At all times material herein Respondent and the Union have been parties to a collective-bargaining agreement containing a grievance procedure leading to binding arbitration.

Billy Young, the Charging Party, has been employed by Respondent for about 21 years. In June, July, and August he was a forklift tally loader in the shipping department on the second shift under the immediate supervision of Diane Best. James Grundy was the general supervisor.

Young became a union officer in 1977, serving first as vice president and then as president. He was also the steward in the shipping department. Prior to this service as a union official Young had no serious confrontation problems with management. Beginning in September 1977 Young filed a series of grievances against management officials, including the plant manager, the plant superintendent, and Grundy. Several of these grievances were resolved at the fourth or fifth step of the grievance procedure. One was carried to arbitration and denied by the arbitrator on August 29, 1979. In a letter dated January 13, 1979, Young complained to Colin Handlon, Respondent's vice president for labor relations, and Kenneth Hendershott, vice president of the International union, of harassment by Marvin Sturgeon, the plant manager, and Grundy. Young also filed several charges with the Board. Of these charges, one was withdrawn with the Regional Director's approval, one was rejected by the Regional Director, and one charge filed on December 9, 1977, was litigated before an Administrative Law Judge. The Board affirmed the Administrative Law Judge's decision finding that Respondent had violated Section 8(a)(1) of the Act by removing a union newslet-

ter from the bulletin board and threatening Young with disciplinary action if he reposted it.<sup>2</sup>

### 1. The suspension

The complaint alleges that Respondent discriminatorily suspended Young on June 29.<sup>3</sup> On that date Young reported for work at or about 5 minutes before 3 p.m. Best handed Young an inventory schedule, listing the names of employees assigned to take inventory within the next few days. Young examined the document and then stated that "this wasn't the way it had been done." Young told Best and Kenneth Graybeal, the day-shift supervisor, that there should be more hourly employees on the list. Graybeal said that was the way it was going to be handled. Young asked to get the matter settled before he went to work. Best said that Jim Grundy had signed it and she would get in touch with him.

Best told Young to go to work. Young walked out of the shipping office and met Kessler Noe, the chief steward, who had a copy of the inventory schedule. Noe told Young that Noe was on his way to a meeting with Grundy. A few minutes later Noe and Young met with Grundy in the shipping office. Graybeal and Best were also present. Grundy sat down at one of the three desks and wanted to know what the problem was. Young said it was the way the inventory was being assigned, that Sturgeon was trying to replace the hourly personnel with salaried personnel to conduct the inventory. Noe also questioned the Company's procedures in drawing up the inventory schedule. Grundy and the two union officials argued about the issue for a few minutes. During the course of the meeting, which lasted 15 to 20 minutes, Grundy explained that he had prepared the list without consulting anyone. Finally, Grundy said that the meeting was over. He had stated his position and that was the way it was going to be. At that point Young stood up and came around to the front of Grundy's desk, slapped the desk with his hand, and said that he was sick of this "shit" and wanted to get something done right now, that every time they started getting the best of him Grundy would call the meeting off. Young said he wanted to see Sturgeon. Grundy told Young to get back to work and Grundy would get Sturgeon and bring him back. Young said that he did not have to go back to work, that he had been relieved by Best before the meeting began. A second and third time Grundy told Young to go back to work. On the third occasion Young told Grundy to "get his ass out of the office, that Young wasn't going anywhere." Grundy then told Young, "You're suspended until further notice." Grundy also told Young that Young was suspended because of insubordination.

Young clocked out and proceeded to Sturgeon's office, but was stopped by someone at the planning office and was told that he had been suspended and to go home. Thereafter, Young wrote out a grievance and

<sup>2</sup> *Container Corporation of America*, 244 NLRB 318 (1979). Respondent has not complied with the Board's Order and the matter is pending before the circuit court of appeals.

<sup>3</sup> My findings of fact with respect to this incident are a composite of the testimony of Young, Grundy, and Noe, the chief steward, who was called by Respondent.

handed it to the supervisor outside the door of the plant. The grievance was dropped at an executive board meeting.

Grundy called Young at or about 10 p.m. and told Young that he had been suspended for 3 days and to return to work on Tuesday.

Grundy testified that he suspended Young solely for the reason that Young failed to go to his work assignment after having been told to do so three times. Grundy denied suspending Young because of the language Young used, because he pounded the table, or because Young told Grundy to get out of Grundy's office.

The General Counsel adduced evidence that in the spring of 1979 Roger Nicholson, a shipping and receiving clerk on the second shift, was directed by Grundy to fill out the dispatch book for the employees on the first shift. Nicholson refused to comply with Grundy's order, stating it was not part of Nicholson's job. Nicholson also refused Grundy's order to stay inside the shipping office. Nicholson was not disciplined. Grundy explained that Nicholson had not actually refused to perform his duties, but had persuaded Grundy that Grundy was wrong and Grundy changed his mind.

## 2. The warning letter

The complaint also alleges that Respondent unlawfully issued a warning letter to Young on August 3. The incident giving rise to this letter relates to the resolution of an earlier grievance resolved by the parties on January 31.

On January 13 Young filed a grievance against Grundy, asserting that Grundy was trying to change the procedure of the Union and Company on meeting and trying to shut up the Union and hinder its operation. The grievance was resolved at the fifth step of the grievance procedure and was reduced to writing in a letter, dated February 29, from Richard H. Juranek, industrial relations manager of Respondent, to Kenneth Harrell, International representative of the Union. Juranek stated in his letter that the grievance was discussed and resolved at a meeting on January 31. Present for the Company were Juranek, Sturgeon, J. Grundy, G. Redden, and J. Holt. For the Union: were K. Harrell, B. Young, M. Striegel, B. Rather, B. Milsap, R. Clark, and B. Noe.

The issue, as stated by Juranek, related to the right of Young to make telephone calls to Sturgeon when Young felt his duties did not require his presence on the production line. At the January 31 meeting the parties discussed the use of the telephone and the paging system and the impact of such use on managerial authority. The parties reached agreement that in the future Young would advise his immediate supervisor of his desire to see Sturgeon on a particular matter. The supervisor would then forward the request to Sturgeon, who would then make arrangements to contact Young either on the job or at another appropriate place as soon as his duties permitted. In the event the supervisor did not act with diligence, Young would notify Grundy to facilitate communication. Young would not utilize the paging system to contact Sturgeon. In the event of an extreme emergency, Young would notify his supervisor and then contact Sturgeon directly.

On July 31 about 5 or 10 minutes before he was scheduled for work at 3 p.m. Young called William L. Hoge, Jr., the general manager of the plant. Hoge, who answered his own telephone, was upset because he was in a formal meeting with a management group and did not believe Young was calling on an urgent matter. Young told Hoge that Young had a problem and it was kind of urgent and Young needed to sit down and talk to Hoge. Hoge told Young to take it up with Jerry Holt. Young said he did not want to do that because of the nature of the problem. Young testified, without elaboration, that the problem related to Grundy "trying to start on some racial problems in the plant." I credit Grundy's testimony that he was never involved in stirring up racial problems in the plant or that anything of that sort had ever been discussed with Young or Young's representatives. On cross-examination Young agreed that the subject matter of his call to Hoge was not an extreme emergency and that Young had not gone through channels in making the telephone call to Hoge. Young's explanation was that he called Hoge prior to 3 p.m. on Young's own time. Young conceded that it had been made clear to him, through discussions with management resulting in the Juranek letter, that the Company did not want Young to contact Hoge, Sturgeon, or people in the front office without going through his immediate supervisor.

According to Hoge, Young's practice of calling Hoge at inconvenient times had been a source of management concern both before and after the Juranek letter of February 28. Although Hoge had informed Young to check with his supervisor before making a call, Young did not fully comply with this directive and continued to make unauthorized calls from time to time up to July 29.

Hoge was particularly annoyed by Young's call on July 31, which had interrupted a formal meeting between Hoge and his management staff. Hoge questioned Best and determined that Young had not followed the agreed-upon procedure in making the phone call.

As a consequence of Hoge's investigation, Grundy directed Best to issue a disciplinary letter to Young on August 3.

Best's letter called Young's attention to the Juranek letter of February 28 and pointed out that Young had failed to follow the guidelines set forth in that letter. The letter stated, *inter alia*, that Young had called Hoge on July 31 without the knowledge or permission of Young's supervisor, interrupting an important management meeting; that Young had stated to Hoge the matter was a most urgent matter and too serious to discuss with Jerry Holt, the employee relations manager; and that Young had subsequently informed Holt the matter was not an emergency and could wait until Hoge returned to the plant on August 6 or possibly even the following week. The letter concluded by stating that "continued action of this nature by you will result in immediate stronger disciplinary measures."

Leonard Trautwein, an employee on the second shift, testified that he had talked to Sturgeon on two or three occasions, including one occasion early in 1978 and another occasion in August, without receiving permission to talk to Sturgeon and without being disciplined. On

two of these occasions Trautwein had met Sturgeon in the plant and on the third occasion Trautwein called the plant from Trautwein's home with respect to a layoff.

Trautwein also testified that in July 1979 he was talking to Young to make sure Trautwein understood a procedure relating to the stacker on the corrugator. The foreman told Young he would have to leave. The next day Trautwein complained to Grundy, stating that they were not doing anything wrong, just trying to get the thing straightened out. Grundy said he was sorry Trautwein was involved, but that Grundy had to do it because it was Billy Young.

## II. ANALYSIS AND FINAL CONCLUSIONS OF LAW

It is well settled that an employee's conduct during a grievance-related meeting, though objectionable and improper, is nevertheless protected by Section 8(a)(1) of the Act unless the conduct is so opprobrious and flagrant as to exceed the bounds of lawful protected activity. *The Bettcher Manufacturing Corporation*, 76 NLRB 526, 527 (1948); *Socony Mobil Oil Company, Inc.*, 153 NLRB 1244 (1965); *Prescott Industrial Products Company*, 205 NLRB 51 (1973); *Hawaiian Hauling Service, Ltd.*, 219 NLRB 765 (1975); *Ryder Truck Lines, Inc.*, 239 NLRB 1009 (1978).

Respondent contends that Young's suspension on June 29 was due solely to his refusal to work at the direction of his supervisor, Grundy, and was unrelated to Young's conduct during the meeting, including Young's poor choice of language and presumptuous remarks to Grundy.

The record is clear, and Respondent does not contend to the contrary, that Young was engaged in protected concerted activity during the meeting of June 29. The make up of the inventory schedule had long been a matter of contention between the Union and management. Young, a particularly aggressive individual, believed that the hourly employees were being deprived of work opportunities. He argued the point with some heat and with language and conduct which I need not and do not condone. It goes without saying that collective bargaining is best served where the parties involved conduct their business in an atmosphere of mutual respect, if not good will. This requires restraint on both sides and, at times, more restraint on one side than another. Otherwise the cost of lost production and litigation expenses may become an intolerable burden to the employees and their employer, all of whom must share in the company's profit and loss.

In the instant case Young's status in failing to obey immediately Grundy's order to return to work is not simply that of a servant in a master-servant relationship. In a grievance-related meeting a certain measure of equality must be preserved between union and management negotiators so that each may be "free not only to put forth demands and counterdemands, but also to debate and challenge the statements of one another without censorship." *The Bettcher Manufacturing Corporation*, *supra* at 527. Grundy's order to Young to return to work was, in effect, the result of Grundy's unilateral decision to close the meeting and thereby to eliminate further debate. While Young may have been overly argumentative and tenacious in continuing to argue his position

after Grundy announced that the meeting was closed, such conduct by Young falls into the category of "animal exuberance" and is not so extreme or flagrant as to deprive him of the protection of the Act.

Accordingly, I conclude that Respondent violated Section 8(a)(1) of the Act by suspending Young on June 29. In the circumstances of this case I find it unnecessary to decide whether such conduct violated Section 8(a)(3), as alleged by the General Counsel.

I reach a different result with respect to the allegation of the complaint that Respondent violated the Act by issuing a warning letter to Young on August 3.

Young's conduct in calling management officials at his sole discretion had been a matter of concern to Hoge and Sturgeon for some time. The matter was the subject of a grievance filed by Young and carried to the fifth step of the grievance procedure. The resolution of that grievance, to which all parties, including Young, agreed, cut both ways. Except in an extreme emergency, Young would advise his immediate supervisor that he wanted to see Sturgeon on a particular matter. While the Juranek letter of February 28 refers only to Sturgeon, Young had been informed during the January 31 discussion of his grievance that the policy directive applied equally to Hoge and other people in the front office.

I find no merit in Young's explanation that he called Hoge on July 31 on Young's own time. The Juranek letter makes it clear that it was not only Young's time, but management's loss of more valuable time with which the Company was concerned. Indeed, Hoge had told Young on previous occasions that Young was supposed to check through his supervisor and proper arrangements would be made to discuss an issue with Hoge. There was no problem with a meeting; it was a question of time, according to Hoge.

Nor do I find merit in the position of the General Counsel that the directive was discriminatorily applied to Young. It has not been shown that any other union official was a persistent violator of the policy set forth in the Juranek letter. The fact is that Respondent submitted its serious objections to Young's conduct to the formal grievance procedure and the parties considered Young's conduct in the context of Respondent's objections. They agreed to a resolution of Young's grievance, a resolution specifically affecting Young and no other employee. Respondent had a right to expect that Young would adhere to the agreed-upon policy. As in other areas of labor relations, there must be a balance between the right of a union official to contact top management and the right of management to manage. Neither right is absolute. The restriction placed upon Young in calling top management officials was reasonable and approved by the appropriate union officials, including Young. More cannot be expected of an employer attempting to resolve in its favor a labor-management dispute and believing that the dispute had, in fact, been resolved.

Accordingly, I conclude that Respondent did not violate the Act by issuing Young the warning letter of August 31. I shall recommend that this allegation of the complaint be dismissed.

The unfair labor practice found above is an unfair labor practice within the meaning of Section 2(6) and(7) of the Act.

[Recommended Order omitted from publication.]